

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**In Re:**

**AREDIA® AND ZOMETA® PRODUCTS  
LIABILITY LITIGATION**

**(MDL No. 1760)**

**This Document Relates to:**

**3:07-00470 (*Feller*)**

**3:07-00538 (*Sanderson*)**

**No. 3:06-MD-1760**

**Judge Campbell/Brown**

**ORDER**

The Magistrate Judge instructed defendant Novartis Pharmaceuticals Corporation (NPC) to file a motion to recover costs incurred by NPC due to the failure of three scheduled deponents in the cases above to appear for properly noticed depositions. (MDL Docs. 7016, 7017; Related Cases 30, 42) Plaintiff Huran Feller, and his daughter, Linda Capley, failed to appear for their depositions in the *Feller* case. Plaintiff Phyllis Williams failed to appear for her deposition in the *Sanderson* Case.<sup>1</sup>

NPC timely filed a motion to recover costs on October 11, 2013. (MDL Doc. 7057; Related Cases 33, 46) NPC seeks \$500.00 in sanctions for each of the two depositions at issue in *Feller* for a total sanction in *Feller* of \$1,000.00. NPC seeks to recover actual costs in the amount of \$571.75 for the deposition at issue in *Sanderson*.

The two \$500.00 demands for recovery in *Feller* are consistent with the alternative minimum sanction announced at the April 11, 2013 Rule 16 hearing when a party fails to appear for a properly noticed deposition. The \$571.75 in *Sanderson* represents actual cancellation costs incurred, an amount supported by the affidavit of Frederick Helmsing, counsel acting on NPC's behalf in *Sanderson*, and a copy of a bill payable to the Merrill Corporation for facilities/services cancelled. (MDL Doc. 7057, Ex.

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<sup>1</sup> The circumstances surrounding the failure to appear for the depositions at issue are set forth in the Magistrate Judge's September 24, 2013 orders in these cases. (MDL Docs. 7107, 7106; Related Cases 30, 42)

A-B; Related Case 46)

NPC's motion to recover costs in the amount of \$1,5571.75 (MDL Doc. 7057; Related Cases 33, 46) is **GRANTED**. Plaintiff in *Feller* shall pay a sanction to NPC in the amount of \$1,000.00 not later than December 13, 2013. Plaintiff in *Sanderson* shall reimburse NPC's costs in the amount of \$571.75, also by December 13, 2013. Plaintiffs are forewarned that failure to comply with this order by the date specified may result in additional sanctions being imposed for failure to comply with the orders of the court.

It is so ORDERED.

ENTERED this 21<sup>st</sup> day of November, 2013.

/s/Joe B. Brown  
Joe B. Brown  
United States Magistrate Judge